

Status: Point in time view as at 01/04/2018.

Changes to legislation: There are currently no known outstanding effects for the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, SCHEDULE 11. (See end of Document for details)

SCHEDULE 11

(as introduced by section 30(1))

RELIEF FOR ALTERNATIVE FINANCE INVESTMENT BONDS

PART 1

INTRODUCTORY

Overview

- 1 (1) This Schedule makes provision for relief in the case of certain land transactions connected to alternative finance investment bonds.
- (2) The Schedule is arranged as follows—
 - (a) this Part includes definitions of key terms (paragraph 2);
 - (b) Part 2 provides that certain events relating to an alternative finance investment bond are not to be treated as chargeable transactions (paragraph 3) and provides for exceptions to that (paragraph 4);
 - (c) Part 3 sets out the general conditions which apply to the operation of the reliefs provisions in Part 4;
 - (d) Part 4 provides for relief for certain transactions (paragraphs 13 and 15) as well as making provision about withdrawal of relief (paragraph 14) and circumstances where relief is not available (paragraph 17);
 - (e) Part 5 sets out how to apply the relief provisions in cases where the underlying asset is replaced by another asset (paragraph 18) and imposes a duty on WRA to notify the Chief Land Registrar when a charge registered under this Schedule is discharged (paragraph 19).

Commencement Information

II Sch. 11 para. 1 in force at 1.4.2018 by S.I. 2018/34, art. 3

Interpretation

- 2 In this Schedule—
 - “alternative finance investment bond” (“*bond buddsoddi cyllid arall*”) means arrangements to which section 564G of the Income Tax Act 2007 (c. 3) (investment bond arrangements) applies;
 - “arrangements” (“*trefniadau*”) includes any agreement, understanding, scheme, transaction or series of any of those things (whether or not legally enforceable);
 - “bond assets” (“*asedau bond*”), “bond-holder” (“*deiliad bond*”), “bond-issuer” (“*dyroddwr bond*”) and “capital” (“*cyflafaf*”) have the meaning given by section 564G of the Income Tax Act 2007 (c. 3);
 - “prescribed” (“*rhagnodedig*”) means prescribed in regulations made by the Welsh Ministers;
 - “qualifying interest” (“*buddiant cymwys*”) means a major interest in land other than a lease for a term of 21 years or less.

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Commencement Information

I2 Sch. 11 para. 2 in force at 18.10.2017 by S.I. 2017/953, art. 2(e)(i)

PART 2

**ISSUE, TRANSFER AND REDEMPTION OF RIGHTS UNDER
 BOND NOT TO BE TREATED AS CHARGEABLE TRANSACTION**

Bond-holder not to be treated as having an interest in the bond assets

- 3 For the purposes of this Act—
- (a) the bond-holder under an alternative finance investment bond is not treated as having an interest in the bond assets;
 - (b) the bond-issuer under such a bond is not treated as a trustee of the bond assets.

Commencement Information

I3 Sch. 11 para. 3 in force at 1.4.2018 by S.I. 2018/34, art. 3

Bond-holder treated as having an interest if control of underlying asset acquired

- 4 (1) Paragraph 3 does not apply if control of the underlying asset is acquired by—
- (a) a bond-holder, or
 - (b) a group of connected bond-holders.
- (2) A bond-holder (“BH”), or a group of connected bond-holders, acquires control of the underlying asset if—
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
 - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise management and control of the bond assets to the exclusion of any other bond-holders.
- (3) But sub-paragraph (1) does not operate to disapply paragraph 3 in either of the following cases.
- (4) The first case is where—
- (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets, and
 - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders) transfer sufficient rights for that exercise no longer to be possible.
- (5) The second case is where BH—
- (a) underwrites a public offer of rights under the bond, and

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(b) does not exercise the right of management and control of the bond assets.

(6) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

Commencement Information

I4 Sch. 11 para. 4 in force at 1.4.2018 by S.I. 2018/34, art. 3

PART 3

CONDITIONS FOR OPERATION OF RELIEFS ETC.

Introduction

5 This Part of this Schedule defines conditions 1 to 7 for the purposes of paragraphs 13 to 16 and 18.

Commencement Information

I5 Sch. 11 para. 5 in force at 1.4.2018 by S.I. 2018/34, art. 3

Condition 1

6 Condition 1 is that one person (“A”) and another (“B”) enter into arrangements under which—

- (a) A transfers to B a qualifying interest in land (“the first transaction”), and
- (b) A and B agree that when the interest ceases to be held by B as mentioned in paragraph 7(b), B will transfer the interest to A.

Commencement Information

I6 Sch. 11 para. 6 in force at 1.4.2018 by S.I. 2018/34, art. 3

Condition 2

7 Condition 2 is that—

- (a) B, as bond-issuer, enters into an alternative finance investment bond (whether before or after entering into the arrangements mentioned in condition 1), and
- (b) the interest in land to which the arrangements mentioned in condition 1 relate is held by B as a bond asset.

Commencement Information

I7 Sch. 11 para. 7 in force at 1.4.2018 by S.I. 2018/34, art. 3

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Condition 3

- 8 (1) Condition 3 is that, for the purpose of generating income or gains for the alternative finance investment bond—
- (a) B and A enter into a leaseback agreement, or
 - (b) such other condition or conditions as may be prescribed is or are met.
- (2) For the purposes of condition 3, B and A enter into a leaseback agreement if B grants to A, out of the interest transferred to B—
- (a) a lease (if the interest transferred is freehold), or
 - (b) a sub-lease (if the interest transferred is leasehold).

Commencement Information

I8 Sch. 11 para. 8 in force at 1.4.2018 by [S.I. 2018/34](#), **art. 3**

Condition 4

- 9 (1) Condition 4 is that, before the end of the period of 120 days beginning with the effective date of the first transaction, B provides WRA with the prescribed evidence that a satisfactory legal charge has been entered in the register of title kept under section 1 of the Land Registration Act 2002 (c. 9).
- (2) A charge is satisfactory for the purposes of condition 4 if it—
- (a) is a first charge on the interest transferred to B,
 - (b) is in favour of WRA, and
 - (c) is for the total of—
 - (i) the amount of tax which would (apart from paragraph 13) be chargeable on the first transaction if the chargeable consideration for that transaction had been the market value of the interest on the effective date of that transaction, and
 - (ii) any interest and penalties which would for the time being be payable on or in relation to that amount of tax, if the tax had been payable (but not paid) in respect of the first transaction.

Commencement Information

I9 Sch. 11 para. 9(1) in force at 18.10.2017 for specified purposes by [S.I. 2017/953](#), **art. 2(e)(ii)**

I10 Sch. 11 para. 9(1) in force at 1.4.2018 in so far as not already in force by [S.I. 2018/34](#), **art. 3**

I11 Sch. 11 para. 9(2) in force at 1.4.2018 by [S.I. 2018/34](#), **art. 3**

Condition 5

- 10 Condition 5 is that the total of the payments of capital made to B before the termination of the bond is not less than 60% of the market value of the interest in the land on the effective date of the first transaction.

Commencement Information

I12 Sch. 11 para. 10 in force at 1.4.2018 by [S.I. 2018/34](#), **art. 3**

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Condition 6

- 11 Condition 6 is that B holds the interest in the land as a bond asset until the termination of the bond.

Commencement Information

I13 Sch. 11 para. 11 in force at 1.4.2018 by S.I. 2018/34, art. 3

Condition 7

- 12 Condition 7 is that—
- (a) before the end of the period of 30 days beginning with the date on which the interest in the land ceases to be held as a bond asset, the interest is transferred by B to A (“the second transaction”), and
 - (b) the second transaction is given effect not more than 10 years (or such other period as may be prescribed) after the first transaction.

Commencement Information

I14 Sch. 11 para. 12 in force at 1.4.2018 by S.I. 2018/34, art. 3

PART 4

RELIEF FOR CERTAIN TRANSACTIONS

Relief for the first transaction

- 13 (1) The first transaction is relieved from tax if each of conditions 1 to 3 is met before the end of the period of 30 days beginning with the effective date of that transaction.
- (2) Where the qualifying interest in land is replaced as the bond asset by an interest in other land, sub-paragraph (1) is subject to paragraph 18 (replacement of asset).
- (3) Sub-paragraph (1) is also subject to paragraph 17 (no relief where bond-holder acquires control of underlying asset).

Commencement Information

I15 Sch. 11 para. 13 in force at 1.4.2018 by S.I. 2018/34, art. 3

Withdrawal of relief for the first transaction

- 14 (1) Relief under paragraph 13 is withdrawn if—
- (a) the qualifying interest in land is transferred by B to A without conditions 5 and 6 having been met,
 - (b) the period mentioned in (or prescribed under) paragraph 12(b) expires and any one of those conditions has not been met, or
 - (c) at any time it becomes apparent for any other reason that any one of conditions 5 to 7 cannot or will not be met.

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- (2) Relief under paragraph 13 is also withdrawn if condition 4 is not met.
- (3) Where relief under paragraph 13 is withdrawn the amount of tax chargeable on the first transaction is the tax that would have been chargeable but for the relief if the chargeable consideration for the transaction had been the market value of the qualifying interest on the effective date of the transaction.

Commencement Information

I16 Sch. 11 para. 14 in force at 1.4.2018 by S.I. 2018/34, art. 3

Relief for the second transaction

- 15 (1) The second transaction is relieved from tax if—
- (a) each of conditions 1 to 7 is met, and
 - (b) the provisions of this Act and TCMA in relation to the first transaction are complied with.
- (2) Where the qualifying interest in land is replaced as the bond asset by an interest in other land, sub-paragraph (1) is subject to paragraph 18 (replacement of asset).
- (3) Sub-paragraph (1) is also subject to paragraph 17 (no relief where bond-holder acquires control of underlying asset).

Modifications etc. (not altering text)

C1 Sch. 11 para. 15 restricted (1.4.2018) by [The Land Transaction Tax \(Transitional Provisions\) \(Wales\) Regulations 2018 \(S.I. 2018/126\)](#), regs. 1(2), 6

Commencement Information

I17 Sch. 11 para. 15 in force at 1.4.2018 by S.I. 2018/34, art. 3

Discharge of charge when conditions for relief met

- 16 If, after the effective date of the second transaction, B provides WRA with the prescribed evidence that each of conditions 1 to 3 and 5 to 7 has been met, the land ceases to be subject to the charge registered in pursuance of condition 4.

Commencement Information

I18 Sch. 11 para. 16 in force at 18.10.2017 for specified purposes by S.I. 2017/953, art. 2(e)(iii)

I19 Sch. 11 para. 16 in force at 1.4.2018 in so far as not already in force by S.I. 2018/34, art. 3

Relief not available where bond-holder acquires control of underlying asset

- 17 (1) Relief provided under paragraph 13 or 15 (including where the relief is provided under either paragraph as modified by paragraph 18) is not available if control of the underlying asset is acquired by—
- (a) the bond-holder, or
 - (b) a group of connected bond-holders.

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- (2) A bond-holder (“BH”), or a group of connected bond-holders, acquires control of the underlying asset if—
 - (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
 - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise management and control of the bond assets to the exclusion of any other bond-holders.
- (3) If BH, or the group, acquires control of the underlying asset before the end of the period of 30 days beginning with the effective date of the first transaction, the effect of sub-paragraph (1) is that paragraph 13 does not apply to that transaction.
- (4) If BH, or the group, acquires control of the underlying asset after the end of that period and conditions 1 to 3 have been met, the effect of sub-paragraph (1) is that any relief under paragraph 13 is treated as withdrawn under paragraph 14.
- (5) But sub-paragraph (1) does not prevent the reliefs being available in either of the following cases.
- (6) The first case is where—
 - (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets, and
 - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that exercise no longer to be possible.
- (7) The second case is where BH—
 - (a) underwrites a public offer of rights under the bond, and
 - (b) does not exercise the right of management and control of the bond assets.
- (8) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

Commencement Information

I20 Sch. 11 para. 17 in force at 1.4.2018 by S.I. 2018/34, art. 3

PART 5

SUPPLEMENTARY

Replacement of asset

- 18 (1) Paragraphs 13 to 16 apply with the modifications set out in sub-paragraph (2) or (as the case may be) (3) if—
 - (a) conditions 1 to 3 and 7 are met in relation to an interest in land (“the original land”),

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- (b) B ceases to hold the original land as a bond asset (and accordingly, transfers it to A) before the termination of the alternative finance investment bond,
 - (c) A and B enter into further arrangements satisfying condition 1 relating to an interest in other land (“the replacement land”), and
 - (d) the value of the interest in the replacement land at the time it is transferred from A to B is greater than or equal to the market value of the interest in the original land on the effective date of the first transaction relating to the original land.
- (2) In relation to the original land, condition 6 does not need to be met if conditions 1, 2, 3, 6 and 7 (as modified by sub-paragraph (3)) are met in relation to the replacement land.
- (3) In relation to the replacement land—
- (a) condition 5 applies as if the reference to the interest in land were a reference to the interest in the original land, and
 - (b) condition 7 applies as if the reference in paragraph 12(b) to the first transaction were a reference to the first transaction relating to the original land.
- (4) If the replacement land is in Wales, the original land ceases to be subject to the charge registered in pursuance of condition 4 when—
- (a) B provides WRA with the prescribed evidence that condition 7 is met in relation to the original land, and
 - (b) condition 4 is met in relation to the replacement land.
- (5) If the replacement land is not in Wales, the original land ceases to be subject to the charge registered in pursuance of condition 4 when B provides WRA with the prescribed evidence that—
- (a) condition 7 is met in relation to the original land, and
 - (b) each of conditions 1 to 3 is met in relation to the replacement land.
- (6) This paragraph also applies where the replacement land is replaced by further replacement land; and in that event—
- (a) references to the original land (except those in sub-paragraph (3)) are to be read as references to the replacement land, and
 - (b) references to the replacement land are to be read as references to the further replacement land.

Commencement Information

I21 Sch. 11 para. 18(1)-(3)(4)(b)(6) in force at 1.4.2018 by [S.I. 2018/34](#), [art. 3](#)

I22 Sch. 11 para. 18(4)(a)(5) in force at 18.10.2017 for specified purposes by [S.I. 2017/953](#), [art. 2\(e\)\(iv\)](#)

I23 Sch. 11 para. 18(4)(a)(5) in force at 1.4.2018 in so far as not already in force by [S.I. 2018/34](#), [art. 3](#)

WRA to notify Registrar of discharge of charge

- 19 (1) Where a charge is discharged in accordance with paragraph 16 or 18(4) or (5), WRA must notify the Chief Land Registrar of the discharge in accordance with land registration rules (within the meaning of the Land Registration Act 2002 (c. 9)).

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- (2) WRA must do so within the period of 30 days beginning with the date on which B provides the evidence in question.

Commencement Information

I24 Sch. 11 para. 19 in force at 1.4.2018 by S.I. 2018/34, art. 3

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